The Hall, 2nd Floor, Memorial Hall Library, 2 N. Main Street, Andover

Present were: Anderson (Chair); McDonough (Clerk); Jeton, Brown, Batchelder (Members); and Ranalli (Associate Member).

The meeting opened at 7:02 p.m.

Petition No.: 3985

Premises affected: 200 Andover Street Petitioner: 200 Andover Street LLC

Members: Anderson, McDonough, Jeton, Brown, Batchelder, and Ranalli

Stephanie Jones, owner / representative, presented the petition to the Board requesting a variance from §4.1.2 to construct an addition that will not meet the side or rear setback. The two-story brick building, constructed in 1870, is located in the IG district. The addition will be 26' wide at the south end, and 16' wide at the north end. The addition will include space for a full service elevator. The Ballardvale Historic District Commission reviewed the proposal on 4-4-12. The commissioners voiced favor for the current design. The current use of the building is office space. The proposed use is office or other (restaurant). The board questioned if Planning Board Site Plan Review is required and the impact of the residential abutters. Ms. Jones explained that a 5' landscape buffer will be provided on the north side of the property. The other abutter to the west is the train station / parking. Marguerite Christopher, owner of 6-8 Dale Street, the residential property directly to the east and the most impacted by 200 Andover Street, pointed out that the two properties share a common boundary, with the building at 200 Andover Street sitting directly on the lot line. Jones showed Christopher the plans, noting that no windows will be added to the rear of the addition. Christopher asked how many seats would be in the restaurant. Brown noted that a restaurant is allowed by right in the IG district. Christopher voiced concern over parking & light overspill and requested screening. Batchelder confirmed that the Zoning Bylaw regulates light overspill & that screening would be appropriate. Anderson pointed out that a 15' setback is required, while a 5' setback is proposed, asking for the hardship. Jones stated that the rear lot line is already taken up by the building & that the building needs an elevator, as well as the preference of the Ballardvale Historic District Commission (BVHDC) preferring the blended addition design to keep it in character. Anderson asked for photos and for the petitioner to speak with the abutter. The Board tabled the matter until later in the meeting. Jones agreed. At 7:53 the Board returned to the public hearing. Jones presented exterior & interior photos of the existing building. She noted that the northerly end of the building is only 16' wide, thus preventing an addition with a 15' side setback. She & Ms. Christopher agreed on, pending BVHDC approval, either a fence or arbor vitae to screen 6-8 Dale Street. Brown asked why the proposed addition is larger than necessary for an elevator. The existing fire escapes will be removed allowing internal fire escape & some additional space. The Board discussed the existing & proposed parking layout. Jones noted the parking configuration submitted with the application & that some will be added to the existing parking. Jeton asked for the existing & required parking spaces. There are 22 existing required and 24 with the addition, while 25 are provided. Jeton explained that a restaurant requires more. Jones also informed the Board that she agreed to dig only for the elevator so as not to worsen drainage. Jeton asked for the hardship. Jones stated that interested buyers want more space and if an addition is constructed, an elevator is necessary. Additionally, a conforming addition would be a blemish to the historical character of the building. Jones will submit the BVHDC packet to the Zoning Administrative Secretary for the record. Brown voiced concern over the 5' setback to the northerly, rear lot line. Jones offered her willingness to work construct the addition at a 15' rear setback. Anderson suggested an approval with condition upon the submission of a revised plot plan showing the addition with a 15' rear setback. The Board requested that the petitioner submit a revised plot plan, as well as a parking and screening plan. The Board continued the public hearing to the May 3, 2012 meeting in order to receive the requested documentation.

Petition No.: 3982

Premises affected: 5 Forbes Lane

Petitioner: Saline

Members: Anderson, McDonough, Jeton, Brown, Batchelder, and Ranalli

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Sharon & Craig Saline represented themselves in their request for a variance from §4.1.2 &/or a special permit under §3.3.5 to construct additions & alterations that will not meet the minimum yard depth requirements. The house was built in 1952, before Karlton Circle was constructed making the lot a corner lot, thus creating the non-conformities. They have spoken with their neighbors & submitted letters of support from those that can see the proposed work. The Board waived a site view. Ranalli made a motion to close the public hearing. McDonough seconded the motion & the Board voted unanimously (6-0) to close the public hearing. McDonough sat off the deliberation, but will still Clerk. The Board then proceeded to deliberate. Brown made a motion to find that the house is a pre-existing, non-conforming structure and that the proposed additions/alterations are an extension of the non-conformities and to grant a special permit under §3.3.5. Brown made another motion to find that the additions/alterations are not more detrimental to the neighborhood and that relief can be granted with the condition that the work be completed in substantial conformity with the plans submitted. Batchelder seconded the motions. Brown added to deny the variance as moot. Anderson suggested a condition that the additions/alterations be setback further from Karlton Circle than the existing structure. The Board voted unanimously (5-0) to grant the special permit with conditions and to deny the variance as moot. Jeton will write the decision.

Petition No.: 3984

Premises affected: 2 Hay Bale Rd

Petitioner: Sawyer

Members: Anderson, McDonough, Jeton, Brown, Batchelder, and Ranalli

Mr. & Mrs. Sawyer presented the petition, along with their contractor, for a special permit under §3.1.3.F.4 to create a family dwelling unit within the basement of their existing single family house for Mrs. Sawyer's aging mother. The unit will contain a bedroom, kitchen/family room, and bathroom. Anderson explained the 5 year restriction on special permits for family dwelling units & the renewal process. The Health Division will need to review the project for septic system capacity. There were no comments or questions from the public. The Board waived a site visit. McDonough made a motion to close the public hearing. Batchelder seconded the motion & the Board voted unanimously (6-0) to close the public hearing. Brown sat off the deliberation. The Board then proceeded to deliberate. Batchelder made a motion to approve the special permit under §3.1.3.F.4 subject to the work being done in substantial conformance with the plans submitted and to a 5 year limit on the special permit. McDonough seconded the motion and the Board voted (5-0) to approve the special permit with conditions. Batchelder will write the decision.

Petition No.: 3087

Premises affected: 460 River Road

Petitioner: Avalon

Members: Anderson, McDonough, Jeton, Brown, Batchelder, and Ranalli

Anderson explained that this is a Request for Insubstantial Change of a 40B. This is not a public hearing. The Board must decide if the change is insubstantial, or if it decides the change is substantial, then a public hearing will be opened. The Board must also explain why it is not substantial, if that is the finding. Present were David Gillespie, Avalon Communities, and Amy McGrath Moody, Goulston & Storrs. They explained that Avalon wishes to change the subsidizing agent from Mass Housing to Mass Housing Partnership. Gillespie pointed out that the State 40B regulations state that a change in the regulatory agent is insubstantial. Anderson informed the Board that he had spoken briefly with Counsel McGrath Moody before tonight's meeting and requested that they draft a proposed decision. McDonough made a motion to close the informal discussion. Batchelder seconded the motion & the Board voted (6-0) to close the discussion. The Board then proceeded to vote whether the requested change is insubstantial. Brown made a motion to approve the requested change as insubstantial. Batchelder seconded the

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motion & the Board voted (6-0) to find that the requested change is insubstantial. The Zoning Administrative Secretary will finalize & stamp the decision drafted by Avalon's counsel.

Petition No.: 3983

Premises affected: 35 School Street

Petitioner: Smith

Members: Anderson, McDonough, Jeton, Brown, Batchelder

Associate Member Ranalli recused herself from the case and left the room. Architect Rob Bramhall was present on behalf of owners Eric & Laura Smith. They are requesting a special permit under section 3.3.5 and a variance from §4.1.2 to construct 2story additions / alterations. The house is located in the SRA district on a corner lot and is historical. The proposed additions will not meet the front setback on Locke Street or the rear setback. This is a pre-existing, non-conforming structure. The Board discussed Section 4.1.3.2.d (average setback of buildings within 200' of subject property). Bramhall had submitted an aerial photograph from Google Earth with his own estimated setbacks. Pervez Mohammed, abutter at 33 School Street, and Matthew Ferrara, 31A School Street, asked to look at the plans to see the location of the addition. Bramhall explained that most of the work will be conform to the setbacks. There were no other comments or questions from the Board or the public. McDonough made a motion to close the public hearing. Brown seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate. Brown informed the Board that he had drafted an approval decision & gave a copy to the Board. The decision makes two findings: one that the work is further than the 200' average setbacks from Locke Street and the other is for a special permit. He suggested that he could add that no surveyed plot plan documenting the average 200' setback was submitted. Anderson added that the Board is satisfied that it meets the requirements of the bylaw, however in the absence of such a plot plan, the Board grants a special permit. McDonough asked to amend the decision to note that two abutters appeared at the hearing. Batchelder made a motion to approve the special permit. McDonough seconded the motion & the Board voted (5-0) (Ranalli recused) to approve the special permit. Jeton suggested sending a letter to the Inspector of Buildings regarding the survey request for the average setback within 200'.

Petition No.: 1924

Premises affected: River Rd / Bulfinch Dr

Petitioner: Riverview Commons

Members: Anderson, McDonough, Jeton, Brown, Batchelder, Ranalli

Anderson asked Attorney Don Borenstein if he'd waive the reading of the legal notice. Borenstein agreed to waive the reading and proceeded to present the case. Present with him were Rick High, of Corcoran Management, and Jim White, engineer. In February the Board found that the requested change was substantial. In 1987 a comprehensive permit was issued for 220 rental units with a specific number of required surface parking spaces. Petitioners wish to add two parking garages, thus removing 13 surface spaces. The lot is located in the Industrial A district. Mr. High explained that the proposed garages are part of a substantial renovation project. They will have 36 spaces in the garages. Jim White, engineer, gave an overview of the garages and the parking demand study they conducted. The site will go from 353 spaces to 340. They consistently found that 290 spaces were in use on site. The buildings are at 97% occupancy. Anderson argued that if not for the comprehensive permit, the project could not have been built by right. Borenstein pointed out that the garages will meet setbacks, it is just the required number of parking spaces for the comp permit that they wish to change. Anderson reminded the Board that these units are no longer counted toward the Town's subsidized housing inventory (SHI), but the applicant is asking for continued benefit from the comp permit. Borenstein stated that the comp permit was complied with, but that the affordable units expired & they are now requesting an amendment. The lack of affordable units now does not disqualify them from the benefits of a comp permit. The Board discussed the fact that this project no longer has an affordable component, that none of the rental units count, but if they were still affordable the Town would exceed 10% SHI. Mr. High explained the regulatory agreement terms that expired in 2005

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& 2006 and their attempts to engage the Town to maintain the affordability by purchasing the units. Anderson referred to a Wellesley case that stated that the proposal needed to be kept in perpetuity and would not continue to get development benefits without the affordable component. He suggested that they make the 3% vacant units affordable. High explained that affordable units are still there via housing vouchers. Upon Anderson's question, High stated that they are not willing to put units back into the SHI. But he will confer with his partners regarding the proposition. Anderson suggested to the Board that they could deny the requested modification based on there being no justification to modify the comp permit without the affordable units & the Town is not benefiting, or approve it with condition that x number of units be put back as affordable into the SHI. He does not see that the comp permit gives the right to trump the bylaw in perpetuity. Borenstein reiterated that the project was built according to the comp permit & settlement and is therefore legally in existence today consistent with those terms. Anderson reminded Borenstein that the Settlement Agreement is enforceable & prescribes exactly the number of parking spaces required and that he does not believe the HAC has the right to trump a denial of a requested modification of a settlement agreement. Borenstein will consult with his client to consider the options and continue the hearing to the May meeting. McDonough made a motion to continue the hearing to the May 3rd meeting. Brown seconded the motion & the Board voted (6-0) to continue the hearing to the May 3rd meeting. Brown asked for the Zoning Bylaw parking requirement in 1987.

Petition No.: 3978

Premises affected: 321, 323, 325 Lowell Street

Petitioner: Lupoli

Members: Brown - Acting Chair, Batchelder - Acting Clerk, Jeton, Ranalli

Attorney Douglas E. Haussler, Esq., Lampert, Hausler & Rodman P.C., of 10 North Road, Chelmsford, MA agreed to a 4-member Board (Baime absent). This is a continued public hearing. Since the hearing opened on 3-1-12, the petitioner attended an IDR and had Planning Board review the proposal. Rick Friberg, engineer with TEC, gave an overview of the special permit request for the use & the variance requests for setbacks & landscape buffers. He answered the following questions that were brought up at the last hearing:

- 1. Confirmed with Andover Police Dept that having access to 3 sides is sufficient (confirmed at 3/13/12 IDR)
- 2. Snow storage / removal any storm with more than 6" the snow will be removed.
- 3. Names species for landscape 35 trees will be elm, spruce, cherry, pear, & honey locust among others
- 4. Acquiring the abutting, land-locked State-owned land the public bid process takes 1-2 years without any guarantee that the petitioner will definitely be able to purchase the land.
- 5. Traffic they supplied the town with additional information, reviewed by DPW, Planning & Engineering. A traffic light will be needed & the Petitioner has agreed to contribute the same amount of money as Windsor Green to build the new signal.
- 6. IDR & Planning Board review took place on 3/13/12 & 3/20/12 respectively. Jacki Byerley, Planner, submitted a letter dated 3/23/12 stating that no significant revisions would be required. The revised plans have already been submitted to Planning & will be reviewed on Tuesday night by the Planning Board.

The Board inquired about the traffic signal & whether all parties agree that it is necessary under current conditions. Friberg stated that there is agreement. The parties are DPW, Planning, Engineering, the IRS traffic study, the proposed 40B, & their own traffic study. Lupoli & Windsor will each contribute \$30,000. Friberg reminded the Board that the proposed medical office building will contribute the least amount of traffic between the IRS, Windsor Green Apts, & the proposed Rolling Green development. Jeton made a motion to close the public hearing. Batchelder seconded the motion & the Board voted (4-0). The Board then proceeded to deliberate. Jeton summarized that this is a tough site & the proposal maximized its use with a well done analysis. She expressed concern over whether the traffic signal will be built. Batchelder agreed stating that it is a great use of the site. Brown commented on the conservative parking estimate that included the storage space. Ranalli agreed with Jeton. The Board discussed the hardships relating to the

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very small and irregular building envelope that renders the lot unbuildable if all setbacks were met. Batchelder made a motion to grant the requested variances. Jeton seconded the motion & the Board voted (4-0) to grant the variances. Jeton made a motion to grant the requested special permit. Batchelder seconded the motion & the Board voted (4-0) to grant the special permit. Brown asked the applicant to draft the facts, send it to the Administrative Secretary and Brown would finalize the decision.

Petition No.: 3980

Premises affected: 139 River Road Petitioner: Andover Donuts

Members: Anderson, McDonough, Jeton, Brown, Batchelder, Ranalli

Attorney Mark Johnson was present along with his clients, Bill Rheinard & Frank Pino of Andover Donuts, requesting a modification of Decision No. 2528 in order to expand an existing coffee counter 200 sq. ft. within the Mobil Station. The petitioners have been to the Planning Board & obtained a certificate of action. The proposed expansion includes a walk-in freezer, fridge, ice machine, mop sink, and a 3-bay sink. No customers will be allowed in this area. The area is currently garage bays. Johnson argued that they do not have to meet the hardship requirements because the use is already approved by variance, although is specifies a square footage. McDonough clarified that the expansion is 240 sq. ft., as depicted on the plan as 12'20'. Johnson confirmed. The Board discussed the continual expansion of this use & their concern that if this modification is approved that it will be used as a precedent for further expansion. Johnson did not believe this would be the case. Brown asked for the current lease area. Pino showed the area of existing & proposed on the plan. Rheinard explained that the current Board of Health requirements require them to install a big dipper. The proposed expansion will ease operations for employees. Bill Fahey, Andover Youth Services (AYS) Director, spoke in favor of the requested modification detailing that Andover Donuts has significantly and continually supported AYS & the Town. Brown disclosed that Mr. Fahey had been a client of his within the past few years. Jeton asked for clarification of the definition of a mini coffee counter considering the multiple prior decisions (some approved, some denied). Johnson declined to define, but stated his assumption that what exists is what was contemplated and that the connotation has changed over the years. Jeton voiced concern that what exists already exceeds what was approved in Decision #2528 and that traffic has been increased due to the increases at Dunkin Donuts. Johnson & Pino argued that gas stations have changed over the years, but that the use is consistent with the original variance granted. The existing Dunkin Donuts space is 25'x40' (1,000 sf). Batchelder voiced no concern over the proposed expansion to satisfy Board of Health requirements into otherwise unused space and that the proposed changes won't increase customer traffic. Batchelder made a motion to allow the minor modification to Decision # 2528 to allow the 12'x20' increase in the space as shown on the plan PP-12 submitted by the applicant because this space will not be used for customers it will be used by background management for the business, there will be no customer increase, there will be no traffic increase, the facilities are necessary for sanitary & environmental improvements with respect to the existing use of the property and this minor modification will expressly create no precedent whatsoever regarding any further increase in the intensity of the use of the property, expansion of the facilities on the property, increase in customer traffic on the property, or any other potential condition that could cause an adverse effect to the property, neighbors or surrounding area. McDonough seconded the motion. Ranalli sat off the remainder of the hearing. The Board felt that although the space occupied by Dunkin Donuts at this site has expanded, legitimate public health / safety concerns exist. The use is allowed by variance. The Board voted (5-0) to approve the modification as stated in the motion. There shall be no increase of customer traffic at the facility, there shall be no further expansion of the business inside the facility, the decision shall reflect that this is not a pass to expand that business in a way that causes adverse traffic effects. If the business does expand beyond what is authorized by this decision, the minor modification may be revoked. Not one square inch of the expanded space may be used to serve any additional customers, nor shall any space not under discussion tonight.

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<u>Discussion Item - Remote Participation</u>

Anderson explained the new regulation adopted by the Board of Selectmen enabling Board members to participate in a public meeting/hearing remotely. He suggested that the ZBA only consider using this option in the rarest of rare cases. The Board agreed. The interaction of the Board is important to the overall process.

Anderson recused himself from the remainder of the meeting.

Petition No.: 3981

Premises affected: 169R Haggetts Pond Rd

Petitioner: Sprint

Members: McDonough, Jeton, Brown (Acting Chair), Batchelder (Acting Clerk), Ranalli

Attorney Jackie Slaga represented the applicant in their request to remove 6 existing antennas, install 3 new antennas + 6 remote radio heads, as well as swap 2 equipment cabinets. The proposed work is part of a nationwide upgrade by consolidating technologies. It will improve call quality, coverage and data. The impact is negligible. The Board inquired whether or not the structural report is included in the packet. Slaga will ensure that the report is stamped by a Massachusetts licensed structural engineer. Brown proposed a condition of approval to include the structural analysis be stamped by a structural engineer in MA prior to issuance of a building permit. Ranalli made a motion to close the public hearing. Jeton seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate the matter. Batchelder made a motion to grant the special permit as described in the petition with the condition that the structural analysis is stamped by a Massachusetts structural engineer. Ranalli seconded the motion & the board voted (5-0) to approve the special permit with conditions. Slaga will draft a decision to submit and the Administrative Secretary. McDonough volunteered to write the decision.

The Board then adjourned the meeting at 10:00 p.m.